

REMARKS

This is a further response to Office Action dated 6/29/2001 and a response to Advisory Action dated 10/03/2001 and interview 10/18/2001, and follows the same sequence, with paragraph numbering matching the Advisory Action.

Paragraph 1. A new reissue declaration is supplied, carrying the signatures of both co-inventors Robert W. Brown and Bruce A. Kade,

Paragraph 2. The new reissue declaration resolves any 37 CFR 1.175 issues.

Paragraph 3. Applicants continue to claim the benefits of filing by Express Mail with certification within the two-year period for broadening. Applicants also assert that these claims, as now presented are not broadened.

Counsel apologizes for the discrepancies which crept in, making the claims 1, 2, 3 and 9 not identical to those in the granted patent, except of course for the negative element "no boiling.". This discrepancy has been corrected in Claims 1-3. As to Claim 9, which adds result limitations to Claim 3, the differences are perforce narrowing, not broadening.

Paragraph 4. The Examiner is thanked for withdrawing the “new matter” ground of objection and the related rejection.

Paragraph 5. The Examiner is thanked for the reminder of Rule 1.121(b). Counsel represents that claims presented in this response conform to this Rule. Because some of the claims have been changed from the patent, and changed back, the brackets and underlining are based on changes from the original patent.

Paragraph 6. The Examiner is asked to reconsider Claims 3 and its dependent Claim 9 with respect to Section 112. All items mentioned by Examiner have been corrected.

Paragraph 7. The Examiner is asked to reconsider all claims with respect to 35 U.S.C. 103(a) in view of the recipe for English muffins in the Boston Globe. English Muffins are very different from English Muffin Bagels. This difference is visually apparent to purchasers. The shape is different. The taste is different. The texture of both the crust and the inside is different, because English Muffins are more moist and have a characteristic fried surface and a characteristic bubbly surface. The Examiner in particular is asked to review

the difference between batter and dough. Batter will pour, dough will not. Batter is not subject to kneading. Batter will bubble with minimum rising; dough will rise.

Dictionary definitions, including the definition submitted by the Examiner, Typically use such terms as "liquid" and "pour." See attached internet excerpts, entitled "Attachment 1 -- Definitions"

Paragraph 8. The Examiner is asked to reconsider the "Broadened Claims after two years" issue with respect to the following points:

First, and very important, there is no broadening of the claims. Note that the broadening is not determined on the basis of each individual claim, but rather on the basis of MPEP 1412.03, which states "A broadened reissue claim is a claim which enlarges the scope of the claims of the patent, *i.e.*, a claim which is greater in scope than each and every claim of the >original< patent."

Second. Claims 1 and 3, as amended, differ from Claims 1 and 3 of the original patent by the added limitation of "...omitting any boiling step..." Claim 2, which is dependent on Claim 1, is unchanged. Claims 4-7 have been canceled. Claim 8 has been canceled in favor of new Claim 9, which is now presented as a dependent on Claim 3. Claim 9 adds to the long proofing step the limitation "resulting generally in the bagels expanding beyond standard

bagel rising, partially closing the navel, and touching adjacent bagels to form bite marks. The added limitation in Claim 9 is merely as statement of result. It is fully enabled by the original written description and drawings, and by the rules of dependency is not broader than its parent claim, Claim 3. Allowance is requested.

Paragraph 9. Counsel apologizes for the discrepancies between Claim 3 as presented in the granted patent and in this application. Counsel represents that Claim 3 as now presented is in the exact wording of Claim 3 of the original patent, with the addition of the “no-boiling “ limitation.

Paragraph 10. The Examiner is thanked for the statement of recognition that the bagel, pita bread and English muffin are separate items, and for withdrawing the Section 112 (first paragraph) issue. This puts the issue into focus—the wording of the claims.

The Examiner is also thanked for the statement of what she considers the claims to define: “1 ... a process for preparing a baked product which includes the steps of preparing a dough, kneading the dough, rising the dough for 3 times in which the third rising time is greater than the sum of the first and

second rising times.” The Examiner is asked to modify this statement to make it accurate and appropriate. An accurate and appropriate statement could be “A method of preparing bagel dough ingredients which includes the steps of preparing a bagel dough mix, kneading it, letting it rise, forming it into individual bun portions, letting it rise again, letting it rise a third time in which the third rising time is greater than the sum of the first and second rising times, omitting any boiling step, and baking to form completed English muffin bagels.” The claims, which are specific to the English muffin bagel, do not generalize to “...a baked product...” but rather call for “A method of preparing bagel ingredients to form an English muffin bagel...” There are myriad known and unknown variants of “...a baked product...” There are very few variants of the English muffin bagel. Note that “bagel ingredients” or “mixed bagel dough ingredients” are also called for. An apple pie is a baked product, but cannot be made solely from bagel ingredients. The result of preparing the dough for a pie crust is different. Next is “...kneading the dough...” This is not included in the English Muffin recipe. The claims have elements and relationships necessary to produce the English muffin bagel . If the claims are followed, they produce an English muffin bagel and nothing else.

The Examiner is asked to withdraw or to modify the statement “ “As states in paragraph 9 of the [Kade] declaration, “batter and dough are similar.” What inventor Kade actually said is “The Examiner appears to confuse the terms “batter’ and ‘dough.’ This is understandable, for in many contexts they are similar. Both, for instance, may contain yeast and flour, although pancake batter usually has baking powder instead of yeast – and both may be [precursors of yeast-risen breads. The process activity pattern in bagel dough and English muffin batter, however, are quite different. The activity pattern in English muffin bagel dough is identical to the activity pattern in bagel dough – up to the point where traditional bagels are boiled and where English muffin bagels are not boiled, but are set for a long rise time – before baking.

The Examiner is again asked to recognize the difference between batter and dough. This is a serious difference in the configuration, the texture, and the taste differences between English muffin and English muffin bagel. The English muffin is a puck-shaped bun, flat on top and bottom, and round because of a constricting ring used during the early part of its cooking. The standard English muffin requires batter, so that it may be poured into the ring and achieve the ring shape. As the Examiner pointed out in her selection of the definition of “batter,” there are differences in definition of the term. But

the term “thick beaten liquid mixture” certainly implies pourability. Dough is not liquid.

The Examiner is asked to withdraw the comment “dough and batter do not differ ... “ Dough and batter differ in many important ways in the complex realm of baking. Counsel would consider a compromise if the Examiner should offer to accept the term “non-batter bagel dough” if the differences between batter and dough should be a sticking point, but such a term is believed to be both unknown and meaningless to those working in the art.

The Examiner is thanked for clearing up confusion as to whether she is demanding fixed periods of time. Note that Claims of the granted patent do not state any fixed period of time, but rather “approximately three hours, said third period of time is greater than the sum of rise times in steps [previous rise steps] ...” or “approximately three hours, said third period of time is greater than the sum of rise times in steps [previous rise steps] and allows for the maximum rising of the yeast nutrients present to approach ...”

The Examiner is asked to withdraw the comment “... the declaration discusses about pancake batter; this discussion is not germane...” This discussion certainly is germane to the perceived confusion between batter and dough, and certainly is germane to the definition of “batter.” Pancake batter, which is used in many household kitchens and in many diners and delicatessens, is much more common than English muffin batter, which

is primarily used only in commercial bakeries. Mr. Kade, with strong experience as the owner of a delicatessen, had much greater experience with pancake batter than with English muffin batter – but his experience certainly is appropriate to concur with the Dalglish Webster’s Dictionary of American English definition of “batter.” Note that the principal reference cited, the Boston Globe article, . specifies “...*a smooth, loose, thick batter, heavier than the usual pancake batter but not at all like conventional dough...let rise, about 1 1/2 hours – it must be bubbly, however long it*

The Examiner goes on to state “The recipe for muffin discloses this sequence of steps.” The Examiner is asked to reconsider this statement. The sequence of steps is quite dissimilar, in the Boston Globe article and in bakeries and kitchens elsewhere.

The Examiner is asked to withdraw the statement “Paragraph 13 of the [Brown] declaration states yeast-risen breads made by letting dough rise and by letting batter bubble may have different tastes and different textures. It is not known what yeast-risen breads the declaration is referring to..” Mr. Kade was merely giving an expert’s explanation of the development of sourness and other taste sensations, which develop differently depending on the amount of moisture and nutrients present. This was in support of the definition of “batter” as contrasted to the definition of “dough.” Mr. Kade was not

comparing a specific batter to a specific dough, but explaining how the process works. There is no need to compare tastes for sourness – Mr. Kade merely stated what to look for. There is not need to compare textures – Mr. Kade merely stated what to look for.

Text quoting from the Boston Globe article, excerpted from the earlier response, bears repeating here, as follows

“...a smooth, loose, thick batter, heavier than the usual pancake batter but not at all like conventional dough...let rise, about 1 1/2 hours – it must be bubbly, however long it takes.” The English muffins are cooked slowly, in rings buttered fairly generously, until bubbles pierce the top surface ... dryish gray color ... this will take 6 to 8 minutes or more ...Now turn muffins over for a brief cooking on the other side.”

“Take the bagel. It’s shaped like a doughnut but is boiled before baking. Chewy rather than light, bagels are unsweetened breads traditionally served with a generous dose of cream cheese, an, if you’re lucky, lox. They’re delicious hot from the oven.”

Note that the rejection is an obviousness rejection under Section 103. Such a rejection normally requires a suggestion to combine. There is no hint anywhere that anyone should attempt to merge or concatenate the separate and differentiated Boston Globe recipes for English muffin and for bagel.

The Advisory Action terminates with communications information which requires no comment.

The Boston Globe article makes a clear distinction between the bagel and the English muffin. It provides a separate recipe for bagels and a separate recipe for English muffins, stating: "Then there's the English muffin, an American favorite most often served at breakfast." There is no hint that these two items could be made from similar dough, or from similar batter, much less that an English muffin bagel could be made from bagel dough. The bagel dough is quite different from the English muffin batter. The bagel recipe in The Boston Globe specifies two kinds of flour, bread flour and ground oat flour. The flour totals 3 to 3 1/4 cups; the water totals 1 1/2 cups. This is a >2:1 flour/water ratio. The English muffin recipe in The Boston Globe specifies one kind of flour, all-purpose flour, but adds 2 tablespoons instant mashed potatoes. It also adds softened butter. Total flour/including potatoes,, is less than 2 3/4 cups; total water is slightly more than 1 1/4 cups. The recipe states that, when beaten vigorously, this makes"...a smooth, loose, thick batter, heavier than the usual pancake batter but not at all like conventional dough."

In summary, The Boston Globe makes clear the distinction between Bagels, Pita Bread and English muffins, and tells how to make each of these items, with a separate list of ingredients and a separate procedure for each. The English muffin is different from

the bagel and from Pita bread. The English muffin bagel of this patent application is different from both the English muffin and the bagel.

The Examiner was earlier asked to withdraw the comment “The sitting of the batter after the second rising is equivalent to the claimed long proofing step.” The second rising step in The Boston Globe recipe for English muffins, is stated to be: “...Cover with plastic wrap and let rise, preferably at around 90 degrees, until batter has risen and large bubbles have appeared in the surface (usually about 1 1/2 hours – it must be bubbly, however long it takes Under any circumstances, rising time for English muffins is not to be confused with rising time for bagels or, for that matter, rising time for bread generally. It is not possible to achieve English muffin bagels by following the English muffin recipe in the Boston Globe. The batter is different. The baking is different. The baker might end with an English muffin with a hole in it, but not with an English muffin bagel..

The Examiner was earlier asked to withdraw the comment that “the claims do not define what the ingredients are. “ While this comment is technically true, it gives the wrong impression. The claims state “...bagel ingredients.” No baker, amateur or professional, would have any trouble determining bagel ingredients. A typical set of bagel ingredients appears at Column 2, lines 25-34 in the original patent; another set of bagel ingredients appears in the Boston Globe article.

The Examiner was earlier asked to withdraw the comment about the similarity of bagel ingredients and English muffin ingredients. The Boston Globe article shows different flours, all-purpose flour, bread flour and ground oat flour; different amounts of yeast, and different amounts of water. The Boston Globe article also shows different ingredients as follows:

sugar in the bagel recipe;

beaten egg in the bagel recipe

instant mashed potatoes in English muffins recipe;

softened butter in the English muffins recipe.

The Examiner was earlier asked to withdraw the comment about the cornmeal coating. While it is common to use cornmeal as a non-stick coating on the bottom of a bagel, it is not at all common to coat the bagel top surface with cornmeal. Sesame seeds, poppy seeds, onions – these are common coatings for bagels, not cornmeal.

The Examiner earlier commented “As to the kiss marks, this does not make the bagel to be different. , It will inherently happen whenever any baked product is placed close ...” This comment is true, but it is also true that the traditional bagel should not have bite marks, while the English muffin bagel generally has a plurality of bite marks. During recent years, as the traditional bagel has increased in bulk, bite marks have become more common as the bagels are crowded during processing and baking. Claims 6 and 7 have accordingly been canceled, but the bite mark limitation

returns in Claim 9 (dependent on Claim 3) as a statement of result – in a clause following the word “generally.”

The Examiner is thanked for the following statements, made in the earlier Office Action:

“The bagel and the muffin have long been recognized as different, with different. Configurations.

‘English muffins are not boiled. Traditional bagels are boiled.

“Bagel and muffin are different products. The English muffin is different from traditional muffins. The English muffin bagel is different from bagel, muffin and English muffin.”

Summary of the Response

Applicants have addressed each point of the Advisory Action. A new reissue declaration is supplied, It contains a statement that all errors which are being corrected in the reissue application up to the time of filing of the declaration arose without any deceptive intention on the part of the applicants. It contains a fresh signature from each applicant. Claims have been corrected by amendment, and made simpler. Four claims remain. The principal difference between these claims and the claims of the patent is the negative limitation on the boiling step. Claim 9, being dependent on Claim 3, includes this negative limitation, and

includes additional limitation "...resulting generally in the bagels expanding beyond standard bagel rising, partially closing the navel, and touching additional bagels to form bite marks..."

The reason why this reissue is important is to clarify the differences between the English muffin bagel made according to the patented method, and the traditional bagel. The additional limitations are statements of result of the method steps. Even though these additional limitations do not broaden the claims, they make it convenient to determine, from examining the English muffin bagel itself, whether it was made according to the patented method, without doing detective work in the back rooms of suspect bagelries.

Allowance of the remaining four claims, as amended, is requested.

Robert W. Brown & Bruce A. Kade

By Carl C. Kling

Carl C. Kling, (Reg. 19, 137)

1. A method of preparing bagel ingredients to form an English muffin bagel, comprising the following steps:
 - a) mixing a bagel-dough mix;
 - b) kneading said bagel-dough mix;
 - c) letting said bagel-dough mix rise in a warm environment for a period of time sufficient to form first-rise bagel dough;
 - d) shaping said first-rise bagel dough into a set of individual bun portions;
 - e) letting said bagel-dough individual bun portions rise in a warm environment for a second period of time sufficient to form second-rise bagel dough individual bun portions;
 - f) proofing said second-rise bagel dough individual bun portions in a warm environment for a third period of time of approximately three hours, said third period of time is greater than the sum of rise times in steps c and e to form English muffin bagel dough individual bun portions;
 - g) omitting any boiling step; and
 - h) griddle-baking said English muffin bagel dough individual bun portions to form completed English muffin bagels..

2. A method of preparing bagel ingredients to form English muffin bagels, according to Claim 1, in which step (f) is preceded by an intermediate step (f.1) of water-misting and coating top and bottom surfaces of said English muffin bagel individual bun portions with a thin layer of cornmeal.

3. A method of preparing bagel dough to form English muffin bagels, said dough including a quantity of yeast nutrients which define a maximum rising of said dough, said dough at some point during following steps being configured into selected shapes,

comprising the steps of

- a) letting said bagel dough rise in a warm environment for a first period of time sufficient to form a first-rise bagel dough;
- b) shaping said first-rise bagel dough into a set of individual bun portions;
- c) letting said set of bagel-dough individual bun portions rise in a warm environment for a second period of time sufficient to form second-rise bagel dough individual bun portions;
- d) proofing said second-rise bagel dough individual bun portions in a warm environment for a third period of time of approximately three hours, said third period of time is greater than the sum of rise times in steps a and c, and allows for the maximum rising of the yeast nutrients present to approach, to form English muffin bagel dough individual bun portions;
- e) omitting any boiling step; and
- f) griddle-baking said English muffin bagel dough individual bun portions to form completed English muffin bagels.

9. A method of preparing bagel ingredients to form English muffin bagels according to Claim 3, omitting any boiling step, maximum rising for the yeast nutrients present being approached in said long proofing step, resulting generally in the bagels expanding beyond standard bagel rising, partially closing the navel, and touching adjacent bagels to form bite marks;